



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 7, 2019

CASE NUMBER: 2018OPA-0829

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|----------------|---|-----------------------------------|
| # 1 | 5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained (Unfounded) |
| # 2 | 8.200 - Using Force 1. Use of Force: When Authorized | Not Sustained (Lawful and Proper) |

Named Employee #2

| Allegation(s): | | Director’s Findings |
|----------------|---|-----------------------------------|
| # 1 | 5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained (Unfounded) |
| # 2 | 8.200 - Using Force 1. Use of Force: When Authorized | Not Sustained (Lawful and Proper) |

Named Employee #3

| Allegation(s): | | Director’s Findings |
|----------------|---|-----------------------------------|
| # 1 | 5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained (Unfounded) |
| # 2 | 5.140 - Bias-Free Policing 6. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing | Not Sustained (Lawful and Proper) |
| # 3 | 16.090 - In-Car and Body-Worn Video b. When Employees Record Activity d. Recording in Sensitive Areas | Not Sustained (Lawful and Proper) |

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that he was subjected to biased policing by the Named Employees. He further contended that Named Employee #1 and Named Employee #2 subjected him to excessive force. It was lastly alleged that Named Employee #3 may have failed to investigate an allegation of biased policing and may have improperly recorded Department video in a hospital.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

The Complainant was detained for DUI. Named Employee #1 (NE#1) reported to Named Employee #2 (NE#2) that, after the detention, the Complainant, who identified as Hispanic, told NE#1 that he was ruining his life because NE#1



was White. Another officer informed NE#2 that the Complainant stated that he felt uncomfortable around White officers. The Complainant called the officers “White boy” on several occasions and further referred to them using a racial slur for African-Americans. He further stated that he wanted someone who was his own race to come to the scene.

Some of these statements were relayed to Named Employee #3 (NE#3), the supervisor who responded to the incident. The Complainant did not make any allegations of bias in NE#3’s presence; however, he did call an officer “White boy” and this was captured on NE#3’s Body Worn Video (BWV). NE#3 again interviewed the Complainant concerning this incident while at the hospital. The Complainant relayed the circumstances underlying his arrest, but did not make an allegation of bias at that time.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

Based on OPA’s review of the record, there is no indication that any of the Named Employees engaged in biased policing. The Complainant was detained and later arrest due to his conduct, not his race. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #2

8.200 - Using Force 1. Use of Force: When Authorized

At the time of his arrest, the Complainant was agitated and argumentative with officers. NE#1 and NE#2 placed the Complainant into handcuffs and guided him to the patrol vehicle. At that time, the Complainant began to physically resist the officers. Using control holds, the officers were able to secure the Complainant in the rear of the patrol vehicle. No further force was used. The Complainant later alleged that his hands were broken. Based on that statement, the officers transported the Complainant to the hospital for medical treatment. It was determined that his hands were not, in fact, broken.

When the officers used force on the Complainant, they did so in order to take him into custody and to transport him from the scene. They were legally justified in doing so at that time. The force they used was de minimis and was reasonable, necessary, and proportional under the circumstances. For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegations #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (*see* Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.



Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #2 - Allegation #2

8.200 - Using Force 1. Use of Force: When Authorized

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #3 - Allegations #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #3 - Allegation #2

5.140 - Bias-Free Policing 6. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing

SPD Policy 5.140-POL-6 requires that supervisors conduct a preliminary investigation into allegations of biased policing. In certain circumstances, supervisors are permitted to complete a bias review and, otherwise, the supervisor must make an OPA referral. As discussed above, a complaint of bias is made when individuals allege that they have been treated differently by law enforcement officers because of the individuals' membership in one or more protected classes.

Based on a review of the video, some, but not all of the Complainant's statements were screened with NE#3. Specifically, while NE#3 was informed that the Complainant stated that he was not comfortable around White people, it does not appear that NE#3 was told that the Complainant also stated that the officers were ruining his life because the officers were White.

As NE#3 asserted at his OPA interview, the fact that the Complainant felt uncomfortable around White people does not constitute an allegation of biased policing that needed to be investigated or, for that matter, to be referred to OPA. While, in OPA's opinion, the Complainant's other statement is a closer call, there is insufficient evidence that NE#3 was aware of it. Moreover, the Complainant did not repeat this statement in NE#3's presence or make any other explicit allegations of bias to him. NE#3 cannot be required to investigate or refer to OPA what he did not know about. With regard to the statements that he was aware of, I find that he took appropriate action.

For the above reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.



Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #3 - Allegation #3

16.090 - In-Car and Body-Worn Video b. When Employees Record Activity d. Recording in Sensitive Areas

This allegation was classified for investigation to determine whether NE#3's recording in the hospital was supported by a direct law enforcement purpose. There was no apparent analysis of this issue in the chain of command evaluation of this incident, which thus necessitated an exploration in this case.

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-1(5)(d) provides that officers may record video in sensitive locations, such as a hospital, but only when there is a direct law enforcement purpose for the recording. The policy identifies ongoing criminal activity as such a direct law enforcement purpose, but this is not meant to be an exclusive example. Indeed, in prior cases, OPA found that recording a response to a possible use of force at a hospital (see 2018OPA-0165) or a subject making allegations of misconduct against officers while in a bathroom (see 2018OPA-0186) were permissible under this policy.

At his OPA interview, NE#3 explained that he was screening the Complainant's excessive force allegation at the hospital and that he believed that this fell under a direct law enforcement purpose and warranted recording. Based on my review of the letter and spirit of the policy, I agree. As such, I find that NE#3 acted appropriately in this instance and I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**